

(2021) 07 TEL CK 0079

In the Telangana High Court

Case No : Criminal Petition Nos. 4586, 8621 Of 2014

Chernam Chinna Balmasiah VsState Teachers Union Telangana State

Date of Decision : 28-07-2021

Acts Referred:

Citation : (2021) 07 TEL CK 0079

Hon'ble Judges : Challa Kodanda Ram, J

Bench : Single Bench

Advocate : V Hanumanth Rao, M Laxman Rao

Final Decision : Allowed

Judgement

1. This Revision is directed against the judgment dated 16.06.2020 in C.M.A.No. 15 of 2018 on the file of the IV Additional District & Sessions Judge

at Nagarkurnool which was filed against the order dated 07.03.2018 in I.A.No. 2 of 2018 in O.S.No. 2 of 2018 on the file of the Senior Civil Judge at

Nagarkurnool. Petitioners herein are the plaintiffs in the suit. They filed I.A.No. 2 of 2018 seeking temporary injunction restraining the respondent, his

men, agents, servants, benchmen and other claiming through him from interfering with their peaceful possession of the petition schedule property. The

said Application was dismissed and the Appeal filed thereagainst was also dismissed with costs vide judgment under Revision. One of the grounds

raised in the Revision by the petitioners is that notwithstanding the fact that a large number of documents were referred to in the order in I.A.No. 2 of

2018, strangely, in the appendix of evidence and in the order under the caption exhibits marked, both for plaintiffs as well as the

defendant, they have been shown as NIL. The appellate Court also while advertng to various documents had recorded no documents

were marked which is contrary to the facts on record, thereby the order

stands vitiated.

Learned counsel for the appellants particularly referred to para 3 of the judgment under Revision, wherein it was recorded that the plaintiffs had not

filed any documents to show the possession, without, in fact, referring to any of the documents and discussing about the same. The learned counsel

had relied on the judgments of the Division Bench of this Court in T. Bhopal Reddy v. K.R. Lakshmi Bai 1998(1) ALD 770 (DB), A.P. Mineral

Development Corporation Ltd., Hyderabad v. Trimex Minerals Pvt. Ltd., Chennai 1998 (1) ALT 182 (DB) and of the Single Judge in Aruna Chowhan

v. M/s ARKS Cold Storage (P) Limited 2008(5) ALT 227, to support his contention that the documents ought to have been marked.

On the other hand, learned counsel for the respondent had relied on the judgment of the learned Single Judge in C.M.A.No. 416 of 2015 to submit that

even in the absence of marking of documents, this Court is entitled to refuse injunction.

This Court, having given conscious thought, had observed that there is some ambiguity arising on account of the observations of the Division Bench in

Bhupal Reddy's case, wherein it is not categorically held that it is mandatory for the documents to be marked. On further examination, it was

found that there is yet another judgment of the Division Bench of this Court in C.M.A.Nos. 527,564 and 607 of 2017, dated 21.07.2017, which, while

holding that the Rule regarding marking of documents in terms of the Civil Rules of Practice be adhered to, directed the Registry to issue a Circular to

the subordinate courts to mark the documents filed by the parties to the Interlocutory Applications before deciding such Applications. In this context,

Rules 51, 60 and 115 of the Civil Rules of Practice may be noted.

While Rule 115 deals with marking of documents admitted in evidence, which can be done only at the time of trial, Rule 51 read with Rule 60 caters to

the need of the marking of documents for the purpose of disposal of the Interlocutory Applications. Rules 51 and 60, which are more relevant for the

purpose of dealing with the issue in the present Revision, are extracted as under:

51. Documents referred to in affidavit:-

Document referred to by affidavit shall be referred to as exhibits and shall be marked in the same manner as exhibits admitted by the court and shall

bear the certificate in Form No. 16 which shall be signed by the officer before

whom the affidavit is taken.

60. Proof of facts by affidavit:-

Any fact required to be proved upon an interlocutory proceeding shall unless otherwise provided by these, rules, or ordered by the court, be provided

by affidavit but the Judge may, in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in

the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment.â??

In the light of the above and considering the directions issued by the Division Bench of this Court to issue a Circular if the same is not complied with,

as on date, the Registry shall take necessary steps to do the needful clearly directing all the subordinate officers for strict adherence to Rules 51 and

60, while disposing of the Interlocutory Applications. As a matter of fact, this Court had observed in a large number of cases that there is compliance

wherein reference was made to the documents filed as â??Pâ?? series and â??Bâ?? series which is in conformity with Rule 51.

In the facts of the present case, admittedly, since no documents were marked which amounts to failure to comply with Rule 51, the Civil Revision

Petition is allowed, setting aside the order 07.03.2018 in I.A.No. 2 of 2018 and the judgment dated 16.06.2020 in C.M.A.No. 15 of 2018 and

remanding the matter to the learned Senior Civil Judge at Nakarkunrool to decide the I.A.No. 2 of 2018 afresh. No costs.

In the present case, the pleadings disclose that the respondent / defendant had earlier filed O.S.No. 299 of 1997 along with I.A.No. 668 of 2017

before the Junior Civil Judgeâ??s Court at Nagarkurnool seeking injunction against the appellants / plaintiffs in the present case. To avoid conflicting

orders and considering that the parties to the suit being one and the same, this Court deems it appropriate to direct O.S.No. 299 of 2017 be transferred

and tried along with O.S.No. 2 of 2018 in Senior Civil Judgeâ??s Court at Nagarkurnool. The learned Senior Civil Judge shall pass necessary orders

after giving opportunity to the parties concerned.

Miscellaneous petitions, if any pending, shall stand closed.